

State of the Judiciary, Jefferson City, January 2018

24 January 2018

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chief justice of the Supreme Court of Missouri,
delivered his State of the Judiciary address Wednesday morning, January 24, 2018,
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courtesy of the Missouri House of Representatives communications office.

Introduction

Thank you, Lieutenant Governor Parson, Secretary of State Ashcroft, President Pro Tem Richard, members of the senate, the executive branch and the judiciary. And a special thanks to Speaker Richardson and members of the house of representatives for hosting me this morning to deliver my first, but more significantly, the 45th State of the Judiciary address on behalf of all of Missouri's state judges.

I would like to begin by introducing my colleagues, who collectively – when you include our trial court and court of appeals tenures – have more than 130 years of judicial experience: Judge Laura Denvir Stith; Judge Mary R. Russell; Judge Patricia Breckenridge; Judge George W. Draper III; Judge Paul C. Wilson; and our newest member – appointed last April by Governor Eric Greitens – Judge W. Brent Powell.

One of my first visits to Jefferson City was in the summer of 1985 on the way back from my honeymoon. I remember asking Julie, of the buildings we had toured – the capitol, the governor’s mansion or the Supreme Court building – which one she thought I should aspire to. Luckily for my senator, Dan Hegeman, she liked the big oak doors on the ol’ red brick building across the street.

What started as a joke later turned into a dream – and now I’m living the dream. I spent most of my legal career as a small business owner and solo practitioner in Atchison County, where I later served as an associate circuit judge until Governor Matt Blunt appointed me to the Supreme Court of Missouri in October 2008.

I am honored and humbled that, as chief justice of the Supreme Court, my role is to protect and advance the judiciary, and its stature as an essential branch of our state’s government.

Our founding fathers foresaw the necessity of governance and the privileges and duties self governance under our constitution would bring. As John Jay, the first chief justice of the Supreme Court of the United States, told a gathering in 1777, “The Americans are the first people whom Heaven has favored with an opportunity of deliberating upon and choosing the forms of government under which they should live.”

Our chosen form of government – consisting of three coequal, co-sovereign branches – is now well entrenched. And it is up to those of us in this room this morning, whom the citizens of Missouri have entrusted, to carry out its governance.

Core Functions of the Judicial Branch

Socrates said, only four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially. And so we strive every day, by careful study of the facts and the law, to reach the correct result. Some would say this historical view of judging is not enough for the Supreme Court, because there are the additional obligations to ensure the court system is well-administered and one in which the public has trust and confidence.

A Well-Administered Judiciary

I am happy to report Missouri’s judiciary is in good shape. We are nationally recognized as leaders. Two areas I wish to highlight today are the processes we use to determine who is qualified to practice law and our innovative use of technology.

In 2010, I recommended to my colleagues that Missouri become the first state to adopt the uniform bar examination. This innovative concept recognizes that the same bar examination given on the same date in



many states generates a score that is portable to other states administering that same exam.

The uniform bar examination is not a national bar. It simply permits an applicant to transfer a bar exam score to another participating state to pursue a law license in that state without the undue delay, stress, and expense of having to retake the bar exam.

My thought was this process would substantially benefit law students – the consumers of legal education – many of whom take the bar exam before they have a job and, therefore, before they know in what state they will need a license. At the same time, states using the uniform bar examination maintain their ability to protect the public – the consumers of legal services – by retaining local control over the character and fitness investigations and the manner of testing local legal issues as conditions of earning a law license in that state.

The idea that states would accept a portable bar examination score faced resistance when it was first raised. Most innovations do.

But the Supreme Court of Missouri recognized the value of the uniform bar exam to law students, their families and their employers and became the first state to adopt it. We believed other states could be persuaded to follow suit. And we were right – as Missouri begins its eighth year administering the uniform bar examination, I proudly report another 29 jurisdictions have now joined us in using it, and we have every expectation that number will continue to rise.

Missouri courts are also continuing their tradition of innovation in technology. More than a decade ago, we became the first state to offer the public access to information from a statewide case management system using Case.net, and last summer, the Missouri Judiciary was ranked third – not nationally but internationally! – for the best use of technology to improve court services and access to the public. The award specifically focused on our new Show-Me Courts system, Track This Case tool in Case.net, Pay by Web services, and the mobile optimization of the Missouri Courts website. In case you are counting, we came in behind Arizona and Dubai.

As evidenced by this award, we remain committed to delivering exceptional services and improving public access to our courts. Each of the technology solutions for which we received accolades was designed with Missouri citizens in mind.

Regulating the practice of law, including who is qualified to begin practicing, and using technology to make

our courts more open, transparent and efficient are core functions that fall within the supervisory responsibility of your Supreme Court.

We are proud of these successes and strive to improve how we perform our more familiar core functions, and we stand ready to cooperate with the legislative and executive branches in areas of overlapping concern.

I see four particular areas in which we three branches of government can continue to work together to move this great state of Missouri forward: (1) through the work of the Justice Reinvestment Task Force; (2) through the expanded use of treatment courts; (3) through continued emphasis on criminal justice reform; and (4) through cooperative evaluation of the efficient management of our judicial resources.

Justice Reinvestment Task Force

As I am sure you are aware, Missouri continues to face challenges in its criminal justice system. While, nationally, violent crimes are decreasing, it is not true for Missouri.

As a result, we are spending more on corrections than ever before. Our total incarceration rate remains well above the national average and is growing. We have joined with you in a call for help.

The Supreme Court joined Speaker Richardson, President Pro Tem Richard and Governor Greitens last May in seeking assistance from the United States Department of Justice's Bureau of Justice Assistance and The Pew Charitable Trust to find new ways to improve our troubled system. They granted our request for help in collecting and analyzing data to assist in developing policy options. Through this public-private partnership, we hope to keep corrections spending in check, reinvest those savings in evidence-based strategies to reduce recidivism and, ultimately, and most importantly, to enhance public safety for all Missourians.

With representatives of all three branches of government working hand-in-hand, members engaged in months of study and finished their recommendations last month. The task force is developing legislative options for you to consider. We are optimistic these changes will produce significant, sensible and meaningful improvements.

Treatment Courts and the Opioid Crisis

The second area where our work together can pay off is in the use of treatment courts to help break the cycle of crime, and to respond to the opioid crisis now plaguing Missouri and our entire nation.

Drug overdose is now the leading cause of accidental death in the United States, with the rate of overdose

deaths involving opioids continuing to climb. Our state mirrors the national statistics, as opioid use disorder has taken an enormous toll on Missouri. Missouri lost 1,066 people in 2015 and 1,371 people in 2016 to a drug overdose. This is a staggering increase in deaths.

To grapple with this terrible epidemic, Missouri's treatment courts feature multidisciplinary teams offering a two-fold solution. First, they are addressing the crimes that often are due to substance use; and second, they are helping those who are addicted, and their families, improve their lives and break the cycle of addiction. We have already seen a steady increase in the number of participants entering our treatment courts who say their drug of choice is heroin or other opioids.

Like they have shown in other intersections of drugs and crime, we anticipate our treatment courts will be on the front lines of the opioid battle. By continuing to reduce drug use and keeping addicted offenders out of prison, those offenders can continue to work and provide for their families.

The success of our treatment courts has largely depended on the cooperation we have had from our partners in the legislature. If we are to break the cycle of drugs and crime, every Missourian in need should have a treatment court program within reach.

Research demonstrates treatment courts are more cost-effective than any other criminal justice strategy. But our treatment courts have been able to serve only a small percentage of individuals facing felony drug charges. Those numbers began to drop even more last July, when the 27 percent core reduction to existing programs took effect. Since then, admission into our various treatment court programs has dropped an average of 23 percent. And right now, there are 15 counties with no access to any type of treatment court. Individuals addicted to opioids and other substances in these areas are restrained by county lines they can't see.

We will work with you over the coming months to expand the reach of treatment courts in hopes of making this resource-saving, life-saving program available in every Missouri jurisdiction.

Criminal Justice Task Force

Our work together as three coequal branches of government continues to be essential to improving our criminal justice system. Last June, the Court established a task force focused broadly on criminal justice.

This group is led by Judge Michael Noble of St. Louis, Christian County Prosecutor Amy Fite and defense attorney J.R. Hobbs of Kansas City. They will recommend evidence-based risk-assessment tools for determining a defendant's suitability for pretrial release; recommend ways to improve how courts impose fines, fees and costs; and identify technological opportunities to improve notice, compliance and public safety.

These efforts are part of broader national movement away from bail release decisions based on financial conditions toward considerations of the risks posed by individual defendants. The national experts suggest there are ways to provide effective screening and supervision to monitor those defendants deemed safe for release during the pretrial period.

It seems obvious and important that – before a trial is held and guilt or innocence is determined – we reserve our jail space for those who pose the most danger to the community or risk of fleeing the jurisdiction, and not those who simply may be too poor to post bail. Studies show even short stints in jail increase the likelihood of missing school or losing jobs and housing. And, of course, pretrial supervision costs a local community substantially less than pretrial incarceration.

I will be leading a team to a pretrial justice reform summit in Indianapolis in May. We will learn about reform efforts nationwide and will have an opportunity to develop an action plan for appropriate responses here in our own state. I am pleased to announce that, in addition to our state courts administrator, Kathy Lloyd, and Montgomery County Associate Circuit Judge Kelly Broniec, joining me at the summit will be Judge Jack Goodman, presiding judge of the 39th Judicial Circuit, and Judge Rob Mayer, presiding judge of the 35th Judicial Circuit.

Both Judge Goodman and Judge Mayer are former members of this General Assembly – serving both in this house of representatives and in the senate – and they are with us today. I believe their legal education and judicial experience, coupled with practical legislative know-how, will assist the Court in deciding what reforms are good for Missouri and how to shepherd through the legislative process any changes that may require your attention. This also demonstrates I am not opposed to both my hunting dogs and my judges being “House”-trained.

Efficient Management of Court Resources

Finally, we look forward to continuing to work cooperatively with the legislative and executive branches to improve our service to the state. We have made significant strides in assessing our own internal operations to find ways to be as efficient and effective as possible.

Ten years ago, we created a “judicial partnership program” designed to help our busiest circuits work through backlogs of cases by partnering them with circuits where judges were available to help meet that demand. This, of course, was important for the citizens and businesses who needed the courts to resolve legal matters of great importance to them – and it was important for us to use our available resources as best we could to meet those needs.

This ability to temporarily transfer judges from one jurisdiction to another is an important design of our state

constitution. While judges are assigned to particular local courts – by county, circuit or appellate district – article V, section 6 also provides that the Supreme Court of Missouri may assign any judge in the state to hear any particular case or serve any jurisdiction in addition to the jurisdiction that judge serves daily. As a result, whether elected by county or circuit or selected by nonpartisan commission, every associate circuit, circuit, appellate, and Supreme Court judge is an employee of Missouri and can be assigned to serve throughout the state.

The primary reason the judicial partnership program was so successful was because it was locally driven, empowering the partnered presiding judges to determine how and when to share judicial resources. I saw how well this worked first-hand. When I was a trial judge in the 4th Judicial Circuit, in the northwest corner of the state, I joined the other five judges of that five-county circuit in regularly traveling to help the 16th Judicial Circuit in Jackson County reduce its backlog of cases.

I am proud to say, last September, the judicial transfer work group dissolved the last two remaining partnerships and, with it, the formal partnership program itself. We managed our own resources so well, and the circuit partnerships had been so successful over the past decade, the backlog of cases that called for the Supreme Court's intervention has been eliminated. Please join me in thanking the many hard-working judges who participated in the mandatory transfer program for helping to advance the timely, effective administration of justice for the people of Missouri. And because no good deed should go unpunished, I also offer an ongoing thank you to those judges who continue to accept ad hoc assignments throughout the state.

Your confidence in the judiciary by tasking us with redrawing our circuits is both appreciated and deserved. Your statutorily required realignment study and plan present a unique opportunity to pursue a data-driven evaluation of the multiple factors that impact court operations. These factors include changes in workload, population and technology; increased use of treatment and other problem-solving courts; and access to local courts. The evaluation of these factors will be critical in determining what, if any, changes in circuit boundaries and jurisdiction would enhance the efficiency and effectiveness of our courts. This evaluation is also necessary to help us understand the costs associated with any changes.

Given the complexity of this comprehensive evaluation, an order was entered in November creating the "Task Force for the Preparation of a Circuit Realignment Plan." I will chair this task force, which includes a judge from each district of the Missouri Court of Appeals and a mix of circuit and associate circuit judges representing rural and urban courts from every part of the state.

We will deliver to you in 2020, as required, a fiscally responsible plan that will best serve the citizens and businesses of our state while ensuring equal access to our courts by those in need.

Conclusion

I was raised to believe everything works better when everybody does their own job well, but with a recognition that sometimes the big jobs require us all to work together. I look forward to assisting in this big job of governing our state, where each branch focuses on its distinct core functions first but cooperates and works together when challenges and opportunities arise.

One thing we all share is the support of those back home whom we love and who make it possible for us to come here to Jefferson City. I feel blessed to serve as the chief justice ... and I'm thankful that position is term-limited. But I feel even more blessed to be a grandfather of one, a father of four and a husband to Julie for more than 32 years.

I want to thank my local sheriff, Dennis Martin, for agreeing to drive my parents, Bob and Nancy Fischer, to be here with us today. My mother has always been my loudest and most loyal cheerleader, and so the folks back home are not surprised my mom's first ride in the back seat of a police car was to be here this morning with me. My dad has always been my best friend. He was the best man at my wedding, and the bailiff in my court when I was a trial judge. My only regret in transitioning from the trial bench to the Supreme Court of Missouri is I miss starting each day with his coffee and our conversation.

My parents still live where I grew up, in Watson. It's the farthest north and west town in Missouri, with a stated population of 100 on the welcome sign ... and trust me, that surely must include some livestock.

My parents' only measurable wealth when I was growing up was the love they had in their hearts for their children. That I now humbly stand before you as chief justice is a testament to them ... and proof beyond any reasonable doubt the American Dream is alive and well in Missouri.

It has been a privilege to speak with you today. Thank you.